

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP(C) No.5672/2008 & CM 10833/2008

SAKSHAM PROMOTERS

INDIA(P) LTD. & ANR.

...Petitioner through
Mr. Harish Malhotra, Sr.
Adv. with Mr. Rahul Kumar,
Adv.

versus

GOVT. OF NCT OF DELHI & ORS...Respondent through

Ms. Jyoti Singh with
Ms. Kimmi Brasa &
Mr. Amandeep Joshi, Advs.
for GNCTD
Mr. Sanjay Poddar with
Mr. Mukesh Kumar, Advs.
for LAC
Mr. Sanjay Katyal, Adv.
for UOI

% Date of Hearing : August 19, 2009

Date of Decision : September 08, 2009

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE V.K. JAIN

- | | |
|--|-----|
| 1. Whether reporters of local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Judgment should be reported in the Digest? | Yes |

VIKRAMAJIT SEN, J.

1. The Petitioner prays for a writ of certiorari or any appropriate direction quashing Notification dated 14.5.2007 under Section 4 of the Land Acquisition Act, 1894 ('LA Act' for short) and the Declaration dated 13.5.2008 under Section 6 of

the LA Act, in terms of which 417.18 square metres. of land out of the Petitioner's property, that is, B-2, Lawrence Road, Delhi is to be acquired.

2. Briefly stated, the facts are that the Respondent/Government of National Capital Territory of Delhi (GNCTD) had taken a decision to construct a flyover on the Ring Road at the Britannia Chowk/Lawrence Road in May, 2001 in order to facilitate the smooth movement of traffic. A draft Notification was drawn up in June, 2001 intending to acquire 894.5 square metres of land from the Petitioner's property. After holding parleys the GNCTD came to a tentative decision in 2004 that 72 square metres would be required for creating a slip road. The flyover at the site is stated to have become operational in January, 2005 till which time avowedly only 47.12 square metres of the Petitioner's land was acquired only for the construction of the slip road. On 14.5.2007 a Notification under Section 4 of the LA Act was issued. This Notification was for 568.64 square metres, of which 417.18 square metres was from the Petitioner's property and 151.46 square metres was to be taken from the adjoining properties B-4 to B-8, earlier belonging to Modern Food Industries (India) Ltd. [presently owned by Hindustan Lever Limited, Modern Food Division]. The Notification stated that the land is likely to be required for the

construction of a flyover at Britannia Chowk, which uncontestably and indubitably is a public purpose. The Petitioner had filed Objections under Section 5A of the LA Act on 11.6.2007, in pursuance of which it was granted a due hearing. The Report of the Land Acquisition Collector, *inter alia*, recommends that "the objections raised by the objectors needs fresh consideration and the ground situation that the land part in B-2 which has been left out of requirement and the land within B-4 to B-8 has already with the Govt. as leased out to DDA land. Moreover, this is small part of land proposed land particularly required for slip road that may be a part of the flyover project, but it will be proper to specifically mentioned this particular requirement of slip road as the 'public purpose' which the present notification lacks". The Petitioner made a Representation to the Lieutenant Governor on 2.5.2008 taking support of the Report. On 13.5.2008 the Joint Commissioner of Police, Traffic, Delhi made a Report to the Principal Secretary to the Lieutenant Governor Delhi to the effect that the "volume of traffic is high. The volume of traffic is further likely to increase manifold after the construction of Rampur underpass. Presently, the left turn at the intersection from B-2 and B-4 Lawrence Road Industrial area are not wide enough. As a result of which the flow of traffic is not smooth. Hence, there is a need for

widening and construction of a regular slip road. As such, the proposal of PWD for construction of slip road is keeping in tune with the requirement at the intersection”.

3. The Additional Secretary (L&B) has prepared a Note dated 13.5.2008 which, in essence, had recommended the immediate issuance of a Declaration under Section 6 of the LA Act since otherwise the Notification dated 14.5.2007 would lapse; that the Police Report could be studied subsequently. Considerable emphasis has been laid on these notings. A Declaration under Section 6 of the LA Act came to be issued on that very day.

4. In the Counter Affidavit of the Land Acquisition Collector it has been asseverated, among other points, that a flyover is a public purpose. The Counter Affidavit on behalf of the PWD states that the total area to be acquired from the Petitioner's land measured 464.30 square metres. This was to be taken-over in two phases, that is, 72 square metres in the first phase and 392.30 square metres in the second phase. It is further asseverated on behalf of the Public Works Department (PWD) that the Petitioner surrendered a piece of land measuring 47.12 square metres against the area required to be acquired, that is, 72 square metres on which a slip road was immediately constructed to ease traffic congestion. It is submitted that the

entire scheme, as approved by the Technical Committee of Delhi Development Authority, as well as the Delhi Urban Arts Commission, could not be completed due to non-acquisition of land for service and slip roads. The PWD had sent several reminders along with the letter of the Joint Commissioner of Police, Traffic dated 13.5.2008. The Affidavit on behalf of the Union of India is to the same effect and it reiterates, among other points, that the built-up structures can also be acquired for public purpose.

5. We have heard the matter in great detail and have carefully perused several photographs placed on record. The principal contention of Mr. Harish Malhotra, learned Senior Counsel for the Petitioner, is that a slip road has already been constructed, which is wider than other slip roads, and, therefore, more than adequately meets the emergent need of road construction in order to facilitate the free flow of traffic. He has emphasised that the slip road is 9 metres in width and any further widening would make it almost the same width as the main Lawrence Road. It is also submitted that on the opposite/other side of the flyover the slip road is only 5.4 metres. However, the submission of learned counsel for the Respondent that there is more vehicular traffic on the Petitioner's side of the flyover than on the other side cannot be

seriously challenged. The photographs, as well as the pleadings, make it abundantly clear that a service road, having a width of 7.5 metres, circumfuses and runs alongside all the adjacent/contiguous plots. The petitioner's property is located at the corner at the intersection of the side slip road and Lawrence Road. The service road comes to an end just before the Petitioner's plot; traffic has to veer right on to the side road and negotiate the slip road for turning left onto Lawrence Road. This is because of the existence of a paved area immediately in front of the Petitioner's property. Because of the convergence to a narrower point, the green cover/passage, which runs between the side road and service road also comes to an end at the verge just before the slip road. There is a pavement next to the green passage which cannot be safely used by pedestrians because of the ingress and egress gates of the Petitioner's property. The Respondents submit that the service road, as well as the green and the pedestrian walk and the slip road, would be able to exist once the acquisition takes place. It has also been explained by learned counsel for the Respondents that the Authorities are of the opinion that the service road should continue uninterruptedly throughout the area so that traffic can effectively flow on the service road. This is presently not possible because flow of traffic is impeded in front of the

Petitioner's plot. It is, therefore, mandatory and unavoidable that the second phase should be completed without further delay. We have studied the maps filed along with the pleadings, as well as the photographs, and are satisfied that acquisition is necessary if the service road along with the pedestrian walk is to be created around the whole Block of plots alongside the Petitioner's property. The interests of pedestrians cannot be overlooked.

6. In exercise of our extraordinary powers under Article 226 of the Constitution of India, we find no reason whatsoever to discount or disbelieve, or in any manner whittle down the opinion of the Authorities that the local and traffic conditions compel the acquisition. We are not impressed with the argument that the slip roads in other areas are narrower than the slip roads already existing and/or proposed to be widened at the site. We are also not impressed with the argument that the main road is 12.4 metres and, therefore, the slip road cannot be further augmented in width. A perusal of Annexure R-3 shows that the Petitioner has unauthorisedly appropriated public land in terms of overhanging air conditioners as well as car parking. It cannot be controverted that the existence of an uninterrupted service road will have a salutary effect on the flow of traffic in

that it shall attract its use in order to avoid the heavily congested main road.

7. We have seen the detailed drawings and are satisfied that the curvature proposed in front of the Petitioner's property is necessary. In this context, if the slip roads are to be narrower than what is planned, commuters would have to negotiate a very sharp or acute left turn, which will invariably create a traffic hazard. The Writ Court does not sit as an appellate forum over such decisions.

8. In the background of these circumstances, we are of the considered view that the facts adumbrated on behalf of the Petitioner are not such as would justify the exercise of the extraordinary powers reposed in the Writ Court. On the contrary, even by our limited expertise the acquisition is necessary for removing traffic impediments and creating a pattern of road for smooth flow of traffic.

9. The Writ Petition is dismissed but there shall be no order as to costs.

(VIKRAMAJIT SEN)
JUDGE

September 08, 2009
tp

(V.K. JAIN)
JUDGE